UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Case No. 01-1139 (JKF)
	.	
W.R. GRACE & CO.,	.	
et al.,	.	824 North Market Street
	.	Wilmington, DE 19801
Debtors.	.	
	.	April 19, 2010
. . . . .	.	10:37 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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THE CLERK: All rise.

THE COURT: Good morning. Please be seated. This is the matter of W.R. Grace & Company, 01-1139. I have a list of participants by phone. Scott Baena, Janet Baer, Ari Berman, David Blabey, Deanne Boll, Thomas Brandi, Michael Brown, Claire Burke, Oliver Butt, Elizabeth Cabraser, Kellie Cairns, Christopher Candon, Gabriella Cellarosi, Richard Cobb, Tiffany Cobb, Daniel Cohn, Jacob Cohn, George Coles, Andrew Craig, Leslie Davis, Michael Davis, Elizabeth DeCristofaro, Martin Dies, John Donley, Melanie Dritz, Michael Duggan, Terrence Edwards, Lisa Esayian, Sandy Esserman, Marion Fairey, Debra Felder, Theodore Freedman, Michael Giannotto, Daniel Glasband, James Green, John Greene, Robert Guttmann, Sarah Harnett, Robert Horkovich, Richard Ifft, Christina Kang, Brian Kasprzak, Stuart Kovensky, Matthew Kramer, Arlene Krieger, Richard Levy, Alan Michael Linn, Peter Lockwood, Alan Madian, Karalee Morell, Anna Newsom, David Parsons, Carl Pernicone, Margaret Phillips, John Phillips, Mark Plevin, Francine Rabinovitz, Joseph Radecki, Natalie Ramsey, Andrew Rosenberg, Ilan Rosenberg, Samuel Rubin, Alan Runyan, Jay Sakalo, Alexander Sanders, Tancred Schiavoni, Darrell Scott, Mark Shelnitz, Michael Shiner, Robert Siegel, Walter Slocombe, Daniel Speights, Shayne Spencer, Theodore Tacconelli, Chris Warren, Edward Westbrook, Richard Worf, Richard Wyron, Elizabeth Yu, and Rebecca Zubaty. And I'll take entries in court. Good morning.

MS. BAER: Good morning, Your Honor. Janet Baer on behalf of W.R. Grace.

MR. FREEDMAN: Theodore Freedman on behalf of W.R. Grace.

MR. DONLEY: John Donley on behalf of W.R. Grace, Your Honor.

MR. LOCKWOOD: Peter Lockwood on behalf of the ACC, Your Honor.

MR. FRANKEL: Good morning, Your Honor. It's Roger Frankel on behalf of the PI FCR.

MR. HURFORD: Good morning, Your Honor. Mark Hurford, Campbell & Levine, on behalf of the ACC.

MS. MAKOWSKI: Good morning, Your Honor. Kathleen Makowski from Pachulski Stang on behalf of the debtors.

MR. RICH: Good morning, Your Honor.

THE COURT: Good morning.

MR. RICH: Alan Rich for the Property Damage FCR.

THE COURT: Good morning.

MR. PASQUALE: Good morning. Ken Pasquale from Stroock for the Unsecured Creditors' Committee.

THE COURT: Good morning.

MR. RESTIVO: Good morning, Your Honor. James Restivo and Tracey Rea for W.R. Grace.

MR. SPEIGHTS: Good morning, Your Honor. Dan Speights on behalf of two Canada claimants which are going to

be tried today.

THE COURT: Good morning.

MS. CASEY: Good morning, Your Honor. Linda Casey on behalf of BNSF Railway Company.

MR. TACCONELLI: Good morning, Your Honor. Theodore Tacconelli for the Property Damage Committee.

MR. TURETSKY: Good morning, Your Honor. David Turetsky of Skadden Arps on behalf of Sealed Air Corporation.

MR. COBB: Good morning, Your Honor. Richard Cobb on behalf of certain bank debt holders. Thank you.

MR. BIRD: Good morning, Your Honor. L. John Bird with Travelers Casualty & Surety.

MR. RILEY: Good morning, Your Honor. Richard Riley from Duane Morris on behalf of the Official Committee of Unsecured Creditors.

MR. HOGAN: Good morning, Your Honor. Daniel Hogan on behalf of the Canadian Zonolite claimants and special counsel thereto.

THE COURT: Good morning.

MR. MANGAN: Your Honor, Kevin Mangan on behalf of the State of Montana and Her Majesty and Rite of the Crown.

THE COURT: Good morning.

MR. WISLER: Good morning, Your Honor. Jeffrey Wisler on behalf of Maryland Casualty Company.

MR. LONGOSZ: Good morning, Your Honor. Edward

Longosz on behalf of Maryland Casualty.

THE COURT: Ms. Baer.

MS. BAER: Thank you, Your Honor. Your Honor, agenda Item Number 1 is the continuing objection of the debtors' to the claim of Massachusetts Department of Envir -- of Revenue. That matter is working on a settlement. It's in the process, but it's a complicated mess, so we'd just like to continue that again to the next omnibus hearing.

THE COURT: All right.

MS. BAER: Your Honor, agenda Item Number 2 are the remaining objections and the debtors' 25th omnibus objection. Most of the remaining objections are tax claims, and we're working through those. One of the objections, however, Your Honor, was the Munoz claim, and agenda Item Number 13 is a related matter to Munoz. It was a motion to lift stay.

Your Honor, you ordered a few months that that matter go to mediation. It did, and it was successful. We have settled the Munoz. The amount is under the negative notice amount, so we sent out a negative notice. It's returnable on the 27th of April. Assuming there are no objections, that settlement of the claim will then become final, and agenda Item Number 13, which is the lift stay, will become moot.

What I would suggest, Your Honor, on Item Number -- well, Item Number 2 we just enter and continue it to the next omnibus hearing, because there are other objections on the 25th

omni. On agenda Item Number 13 what we'd ask Your Honor is just to be able to submit an order on a certification of counsel after the time passes for the negative notice indicating that the matter's moot.

THE COURT: That's fine.

MS. BAER: Your Honor, agenda Items 3 through 9 were all property damage claim settlements. Those have all had orders entered on them.

Number 10 was the debtors' L-TIP motion. An order's been entered on that.

Number 11 was an application to employ Kaye Scholer as regular special counsel. An order was entered on that.

That takes us, Your Honor, to agenda Item Number 12, which we'd like to skip over for now. That's the Maryland Casualty matter, and we think logically it makes sense to go to agenda Item Number 14, since we've now dealt with 13.

Agenda Item 14, Your Honor, is plan status, and Mr. Freedman would like to address that matter, and then we'll go back to the Maryland Casualty matter.

THE COURT: All right. Thank you. Mr. Freedman.

MR. FREEDMAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. FREEDMAN: Your Honor, on March 30th we filed -- the plan proponents filed a amended chart which set forth all of the pending objections and that also had two appendices

attached to it. Appendix B was a -- sort of a summary by claimant or by objector of the pending objections, and Appendix A identified those objections which had been settled and identified to the Court the nature of the settlement.

The objection chart itself is done in the same format as the Court saw immediately prior to the oral argument, except that we struck out, for the Court's information, those objections which were either resolved or withdrawn, so that when the Court goes through it, it'll be very apparent what's pending and what isn't pending.

And frankly, Your Honor, that demonstrates is that where we are right now is -- at the Court's instruction the plan proponents have been diligently pursuing the ability to find settlement where we can find settlement. At this point I can say that we are in productive discussions with CNA, but beyond that the plan proponents do not believe that there is a possibility of coming to a settlement at this stage, and that, frankly, the fastest way to move this case forward, the most productive way to move the case forward would be to ask the Court to proceed to rule on those outstanding objections to confirmation of the plan that are currently before the Court. We --

THE COURT: Mr. Freedman, have I actually received a completed plan document that shows all of the changed language, because I thought I was waiting for something to be filed, and

maybe I missed it, but I haven't --

MR. FREEDMAN: There was a filing on March 19th which did set forth all of the changes to the plan --

THE COURT: In the --

MR. FREEDMAN: -- through today.

THE COURT: In the chart.

MR. FREEDMAN: No. No. March -- the chart on March 30th provided those objections -- set forth the status of the objections. On March 19th we filed an amended plan.

THE COURT: Okay.

MR. FREEDMAN: And we also filed -- or actually, we filed modifications to the plan. We filed with that document a black line that showed how the plan has been changed pursuant to those most current modifications, and also a sort of composite black line that demonstrates changes from the beginning of time as it relates to this plan that's before the Court.

We also filed amended documents with respect to the TDP, the PI TDP, and a number of other amended documents. But that filing, our March 19th, was definitive in terms of amendments to the plan as they now are before the Court. And while it's possible that if we have a successful outcome with our CNA discussions, there might be some further modifications that are necessitated by that. In our view, the issues that are before the Court that relate to confirmation of the plan

will not change by any CNA discussion, and the Court has a complete record before it to go ahead and rule.

THE COURT: Okay, because what I saw on or about March 19th was a chart which was then amended March 30 that I -- maybe I just didn't get --

MR. FREEDMAN: Well, Your --

THE COURT: -- for whatever reason, the additional documents.

MR. FREEDMAN: Your Honor, we can --

MS. BAER: Your Honor, if I might, Your Honor, the Docket Number 24477 is the fourth set of modifications to the joint plan that was filed on March 19th. It was filed the same day as that objection chart, which has subsequently been slight updated.

THE COURT: Okay, but what I'm -- what I'm trying to get at is do I have a complete plan, not one that shows me 15 different sets of changes that I have to incorporate. What was filed March 19th is actually a complete plan.

MS. BAER: Yes, Your Honor, it is.

THE COURT: With --

MS. BAER: It includes a complete plan.

THE COURT: Okay. I'm sorry. For whatever reason, I haven't seen it. Okay.

MR. FREEDMAN: So, Your Honor, with that clarification then, as I indicated, when we did our host trial

briefing at the Court's instructions, those briefs were set forth in a format that was proposed findings and conclusions with explanation and argument. And so in connection with that briefing the Court has the parties' views as to what the proposed findings and conclusions are or should be, and each party to the confirmation hearing has asked the Court to enter what they believe is appropriate with respect to that.

The Court has not asked for a confirmation order, and to the extent that the Court finds that that would be a helpful document, the plan proponents would be prepared to file with the Court in short order a proposed confirmation order if the Court would find that helpful in moving forward.

THE COURT: No, I think what I'm still trying to reconcile is whether all of these proposed findings and the conclusions, based on all of the modifications, are still current, because it seems to me that a number of the findings and overrulings of objections and other requests are not going to be relevant anymore. So I -- I'm wondering whether that's what needs to be amended.

MR. FREEDMAN: Well, we can certainly provide the Court with a amended -- with a set of proposed findings that would in the plan proponents' view incorporate all of the amendments and modifications to the plan. We tried to structure the chart in a way that would, in effect, do the same thing, but we can certainly set it forth in the format of

proposed findings if that would be helpful to the Court.

THE COURT: I actually think it would be, because the chart does help in terms of pinpointing where the responses are, but I'm not sure it helps with respect to the actual parties' views about the findings and conclusions, because there have been a significant number of changes, and I'm grateful for that. This isn't a criticism I'm happy about, but nonetheless, in terms of trying to match up those changes with the proposed findings, it's not always easy to do, so it may be helpful to get a revised set.

MR. FREEDMAN: I guess I would ask the Court -- and we're certainly happy to do -- anxious to do whatever is going to be helpful to the Court. But is the Court asking for proposed findings that go into the same detail in terms of cross references to the record or something that simply summarizes the proposed findings with clarification on what's been settled?

THE COURT: I think a clarification of what's been settled is really what I need. You know, to the extent that certain findings are no longer necessary, and, therefore, I'll use the word can be withdrawn or need to be changed in order to put them in accord with the settlement, that's really what I need. So I'll just make something up.

Let's say, for example, that finding number two related to an issue that has been settled and so finding number

two -- proposed finding number two is no longer the way that the proponents or even the objectors would want the finding phrase. I'd like to know that. So I don't really need a whole new complete set. What I need to know is what needs to be changed in light of the various modifications to the plan.

MR. FREEDMAN: Fine, Your Honor, we will proceed forward to do that expeditiously. And thinking about it, I suppose it's probably something that the Court should set a schedule for doing, because it may be parties that will want to address what the plan proponents' file.

THE COURT: Yes, I would think with respect to the issues that have been settled or objections that are withdrawn, there really shouldn't be much --

MR. FREEDMAN: I wouldn't think so.

THE COURT: -- controversy, but I agree. You'll need to at least exchange and have an opportunity to share that information, because if there is still a controversy, then I'm not sure what's been settled. So I think there ought to be some agreement as to those changes. So tell me how much time you need.

MR. FREEDMAN: What I'd like to do is confer with my colleagues and perhaps if we could go through the discussion and Maryland Casualty, then we could take a few minutes after that.

THE COURT: All right. Does anybody else have

anything on the plan status that needs to be addressed?

(No verbal response)

THE COURT: Okay. Mr. Freedman, thank you.

MR. FREEDMAN: Thank you.

MR. DONLEY: Good morning, Your Honor.

THE COURT: Good morning.

MR. DONLEY: John Donley for W.R. Grace on the Maryland Casualty matter. The status is Maryland Casualty last month filed its response to our objection and since then three parties have filed joinders in our objection, the Libby Claimants, the ACC, and the FCR, and we've discussed with all those parties a proposed joint scheduling order, and we've reached agreement except for perhaps I believe one point with Mr. Wisler who represents Maryland Casualty this morning. So let me start with what we'd agree on as a proposed schedule.

We'd propose 30 days from entry of a scheduling order for us to file our reply brief. From discussions with Mr. Wisler this morning, he asked if they could have, I believe, 14 days for a surreply, and that's fine with us. And then we would suggest, because there is a -- not a huge amount of discovery but some discovery that we would like to take, that discovery begin with 60 days from entry of a scheduling order for written discovery, so that it starts even while people are working on the briefs and we can make good use of the time. And 45 days after that for depositions, and then we'd return at

the -- I believe it's the August 9th omnibus for setting of what we believe is just one hearing that would be needed, and all legal arguments, any evidence that may need to be presented could all be presented at that one unitary hearing.

Now, Mr. Wisler, I'll let him speak for himself. I understand he would prefer to have legal briefing done and legal arguments prior to the initiation of any discovery, and then if there's discovery or an evidentiary hearing, do that later. But I'll defer to Mr. Wisler on that point.

THE COURT: Okay. Well, you're -- on August 9th are you talking about coming to court to do a schedule for the hearing or to do the --

MR. DONLEY: To set a date for that hearing that fits the Court's schedule.

THE COURT: Then I'm going to want -- I'm sorry. I apologize. I was talking over you, and I missed what you said.

MR. DONLEY: We'd anticipate coming in August 9th and proposing a date or asking the Court for a date for an evidentiary hearing.

THE COURT: Okay. Not to do the argument that date.

MR. DONLEY: Correct, Your Honor.

THE COURT: All right. Mr. Wisler.

MR. WISLER: Good morning again, Your Honor. Jeffrey Wisler on behalf of Maryland Casualty. Your Honor, there are -- as Mr. Donley said, we're fine with the schedule for the

reply brief and the surreply. And, in fact, Your Honor, that schedule fits nicely into the June 7th omnibus, which would be about two weeks after we file our reply to have an argument, if Your Honor wanted to have it, on the legal issues, because, Your Honor, there are threshold legal issues here.

Number one, while we have no problem with Grace filing a reply and obviously doing what they need to do, we don't concede Libby or either of the committees may intervene in this claim objection. Rule 7024 does not apply in contested matters. The decision on whether a party can or cannot intervene in a contested matter is purely discretionary with Your Honor.

The joinders that were filed were more or less one liners. We join -- there is no basis set forth in those joinders as to why they should be permitted to intervene or why they need to intervene or why they need to be involved in this claim objection at all. So that's a threshold legal issue that perhaps could be addressed in the briefs to get filed between now and the June 7th omnibus.

The other thing, Your Honor, is I don't know whether you had a chance to look at our response, but there are threshold legal issues that need to be decided before there even needs to be a decision on whether there's going t be an evidentiary hearing. We raised at least two threshold legal issues beyond intervention. One is that the debtors are

judicially estopped from even bringing this claim objection on the basis that they brought it, and that's completely spelled out in our response.

So if Your Honor rules that, in fact, the debtors are judicially estopped from bringing the claim objection as they did, well, there's no need for discovery. There's no need for an evidentiary hearing, and there's no need to do anything between now and June 7th when Your Honor hears that argument.

The other issue is, Your Honor, as we set out in our response, the claim objection essentially seeks an advisory opinion on matters that are not yet right. Specifically, this claim objection says both in the beginning and in the prayer for relief debtor -- the debtors want Your Honor to expunge all Maryland Casualty claims. Well, what are they? Maryland Casualty's claims arise out of its indemnity rights, so every time a claim would be asserted against Maryland Casualty, an indemnity right may or may not be triggered.

If the indemnity right is triggered, that creates a claim. Well, what claims is Your Honor going to decide? Some of these claims haven't arisen yet. After the plan is confirmed, if it's confirmed, claims may be filed against Maryland Casualty. Are those expunged? Well, there's no way to tell, because they haven't been raised yet.

So I don't want to completely argue this issue, but we did raise in our response that this is not a matter to be

decided now. It's not right for adjudication. The debtor is asking for an advisory opinion, and until Your Honor reads and hears those arguments, there's no basis upon which Your Honor can say yes, there should be discovery, it should be 60 days, it should be 45 days, here's the scope. There's no basis for that.

Now, we understand that the debtor wants discovery. We don't necessarily agree on what the scope is, but Mr. Donley and I can talk about that. But part of what will drive the scope of any discovery is what's in the reply papers. When they filed their objection, we filed our response. They want to file a reply. I don't know what's going to be in there, but that may drive the scope of the discovery that may lead to us being able to agree on a discovery schedule.

But, more importantly, Your Honor, when we come back on June 7, if Your Honor wants to hear the arguments that day, we can talk about what the issues are, whether this claim objection should go away simply on legal issues, or whether there should be an evidentiary hearing, and what's the scope of that evidentiary hearing. We want to present that to Your Honor when the time comes. We don't even know what that would be today, so the point is it's not time to take discovery. It's not time to decide on what the discovery is. If they serve discovery requests on us today, I don't know what the scope should or should not be, and we'd like to have an

opportunity to talk with Your Honor about that if we disagree with that.

I want to mention one alternative, also, Your Honor, and that is that as part of confirmation Your Honor's going to have to rule on objections by parties like Maryland Casualty. One of our objections was the classification of our claims. If Your Honor upholds our classification objection and some of our claims are deemed Class 9 claims, that creates one set of interested parties and one set of legal issues. If Your Honor overrules our objection and says all of our claims are Class 6 claims, that creates another set of potential legal issues and another set of interested parties.

What I'm getting at, Your Honor, is our claims have been pending since 2004. Waiting until this plan is or is not confirmed on whatever basis Your Honor confirms it or doesn't confirm it, we'll narrow the issues of what our claims are, and you are the parties that really have a stake in arguing about it, and that would be the most judicially efficient way of resolving these claims. So a suggestion I would make is, Your Honor, to defer all of this until the plan is or is not confirmed. But, if not, Your Honor, we simply suggest that we go along the briefing schedule, have argument on June 9, and if that's the time -- if Your Honor decides at the June -- excuse me -- the June 7th hearing that there is going to be an evidentiary hearing, we should talk about the scope of

discovery and the length of discovery at that time.

THE COURT: Okay. Well, how will I know whether an evidentiary hearing's necessary until I know what class the claims are in? I'm not sure if that's going to make a difference.

MR. WISLER: I understand, Your Honor, which is the reason I made that suggestion, or are -- did I understand your question correctly? You're saying how could I really decide this until I know what the class is.

THE COURT: Yes, I guess that's what I'm asking.

MR. WISLER: I raise the same issue, Your Honor.

THE COURT: All right. Mr. Lockwood.

MR. LOCKWOOD: Your Honor, with respect to the last question, it seems to me that the question demonstrates the fallacy of Mr. Wisler's prematurity argument, because it's a little disingenuous to say he doesn't -- I know what the issue is. His asserted claims, which he's now telling you are wrongly classified, well, how could he tell you if they're wrongly classified if he doesn't know what they are? The answer's he does know what they are. He has a contract. It's a settlement agreement with an indemnity provision in writing in it, and the scope of the claim objection has to do with is there, in fact, a real indemnity agreement beyond the insurance -- additional insureds' type claims to cover the so-called independent tort claims of the Libby Claimants.

That's a very discreet issue. It's either a standard kind of insurance settlement where the insured indemnifies the insurer against other claims against the same insurance coverage, which is one set of indemnity type questions, or it is, as Maryland Casualty has argued in connection, among other things, with its classification objections, does it cover tort claims directly against Maryland Casualty for activities that Maryland Casualty did, actions it took, that while Maryland Casualty may argue are related to its provision of insurance to the debtor are not actually insurance. They're not a -- they're not somebody claiming that I have -- that Maryland Casualty is liable under a policy that it issued to Grace.

So I'm at somewhat of a loss to know how you could even rule on the classification issues if you don't have some sense of whether (a) what the claim is and (b) whether it's valid. I mean one of the things that the debtor is trying to do here is moot the classification issue by having the Court rule that there is no indemnity for these independent tort claims.

With respect to his comment about the intervention and whether the FCR and the ACC should be entitled to intervene, and that's a separate legal issue that ought to get argued first, you may have noticed that one of his arguments that he referred to is judicial estoppel. Well, that judicial estoppel argument is based on statements attributed to W.R.

Grace, the debtor, in various pleadings that were filed in the bankruptcy case. None of the statements that were made were made by the ACC. None of them were made by the Future Claims Representative. None of them, for that matter, were made by the Libby Claimants. And all of those entities --

I mean take, for example, the ACC and the FCR. One possibility is if there is a valid claim here, it's going to get channeled to the Trust. Well, heaven knows, the constituencies of the ACC and the FCR have a profound interest in preventing invalid claims for being channeled to the trust. And but what Mr. Wisler would propose is that argument that basically says nobody can object to this indemnity claim that they want to have either paid by the debtor as a Class 9 claim or channel to the Trust as a Class 6 claim, because the debtor said some things in its papers during the bankruptcy case that estops it from making certain arguments about the validity, but the real parties in interest, if it's a Class 6 claim, under some technical reading of the rules relating to contested matters, don't have standing to pursue that. And, obviously, we dispute that. That's why we filed the motion to intervene.

But the notion that we would have an argument on the merits of the judicial estoppel claim at a hearing in which we're being told the ACC and the FCR can't even speak to it is something that puts the cart before the horse. The bottom line is there's a lot of complicated interactions here, and the gut

issue of the scope of this contractual indemnity that Maryland Casualty is relying on here is a written document. Is it ambiguous? Did the parties -- is there going to be parole evidence sought to be introduced by any party relating to the interpretation of that document? That's what the discovery is all about.

And rather than having a sequencing of legal arguments which I would submit are very unlikely to resolve the issue at the end of the day. It makes more sense, the ACC believes at least, to adopt the debtors' approach, which is a standard approach. I mean what he wants to do is basically have a sort of a summary judgment type or motion to dismiss or motion for judgment as a matter of law or something like that, and then if he loses, then we have a second round of proceedings which will further delay it.

And, also, how does that further delay tie into Your Honor's rulings about classification and whether or not the claim that the debate is about is a valid claim to begin with? So we would support the debtors' proposal on this, Your Honor. Thank you.

THE COURT: Mr. Donley.

MR. DONLEY: Three brief responses, Your Honor. First, Mr. Wisler raised the issue of joinder and whether other creditors can object and join in an objection to another creditor's claim. And the answer -- we haven't briefed or

raised that formally as of now. The issue there is it depends.

We recognize under Section 502(a) that creditors can, under certain circumstances, do that, and there are authorities, the Dow-Corning case is one I can think of, where if a -- if an objecting creditor comes in and obstructs the case or does something contrary to the case, we would stand up at that point and question their authority. But it's really an issue for another day.

Number two, on the discovery we do know that it doesn't depend on the motion practice or legal arguments. We know what we want. It's reasonably limited, and it's the evidence Mr. Lockwood pointed out, evidence on the -- extrinsic evidence on the meaning, the drafting history, the drafts, and the intent, and the meeting of the minds on the indemnity terms that are at issue. So we have a good idea in a focused way what that's about.

And then number three, Your Honor raised the point how can you decide an evidentiary hearing without knowing the classification, and I think that's a fair question. We're just trying to move things along in the meantime and make productive use of developing the legal and discovery record, if we can, in the next few months and then come back on August 9th and see if at that point it's appropriate and timely to have an evidentiary hearing.

So we'd suggest either, you know, defer the schedule

entirely or, as we have proposed, have an essentially unitary schedule where rather than taking things at piecemeal, legal arguments, briefing, discovery all get done all without taking up the Court's time with an evidentiary hearing, which may or may not turn out to be necessary at the end of the day. We just thought that would be the most efficient way to proceed.

THE COURT: Mr. Wisler.

MR. WISLER: Your Honor, I agree with Mr. Lockwood that a lot of this is the cart before the horse. Number one, all the parties at the table has rested at confirmation, so Your Honor doesn't need anything else to rule on our classification objection. What a ruling on the classification objection in the context of plan confirmation will do is it will decide the question Mr. Lockwood asked Your Honor, which is who are the real parties in interest. That's going to answer the question.

If it's all Class 6, then really the debtor isn't a party in interest anymore, and it's all Mr. Lockwood and Mr. Frankel's issue. If it's partially Class 6, partially Class 9, they probably both have a stake in that game. But that's what a ruling on confirmation will decide, that is the real parties in interest.

Your Honor, Mr. Donley got up here and said he's very clear on what he wants for discovery. That's great. I'm not, and I want to be able to bring that to the Court should I need

to after the threshold legal issues are decided. This is not a novel approach to a motion. Let's decide first whether this contested matter even should go to an evidentiary hearing or get into evidence before we start using time and money to take a lot of discovery that may or may not be within a relevant scope.

So, Your Honor, if --

THE COURT: Well, but if the --

MR. WISLER: -- if you defer everything --

THE COURT: But if the issue is limited to essentially the scope of the indemnity that exists, that is not really a plan confirmation issue per se. Determining the classification as to how any claims that survive under that indemnity are treated in the plan is a classification issue, but the legal issue itself is not a plan confirmation issue. It's a determination as to whether or not there is even a claim that goes into a class regardless of what that class is. So I'm not certain why I have to get through the confirmation issues before I can determine the legal issue.

And to the extent that the scope of the indemnity -- and those are my words, I realize, not the parties. To the extent that it's the scope of the indemnity question, it seems to me that discover is appropriate, and if it is focused on those issues, then you should be able to determine whether somebody's going to argue that there is some ambiguity in the

contract or not. And if there is no ambiguity, then you don't need an evidentiary hearing. If there is, you do. So I'm not sure why the discovery shouldn't take place on that track.

MR. WISLER: Well, let me explain, Your Honor. First of all, I agree that the scope of the indemnity is not something Your Honor's going to decide at confirmation. I was merely saying that if Your Honor chose to go that way, going through plan confirmation would potentially narrow the scope, maybe potentially settle the claim objection. In other words, give us a basis to settle the claim objection, but it would likely decide what parties really need to be involved in this process.

But let me answer Your Honor's second question, because the idea that --

THE COURT: Well, the -- but the debtor is always a relevant party in interest with respect to a claims objection against its estate. And to the extent that the ACC and/or FCR are involved in issues involving both Class 6 and Class 9, then assuming that they can get past the legal issue as to whether or not they can participate at all, then I don't see what difference the classification makes, because the debtors are there.

The concept of judicial estoppel on a claims objection is really going to be pretty novel based on the issues that have taken place before the Court before. So I'm

going to have to hear why the debtor should not be able to object to claims against this estate based on the issues that have now been raised.

It seems to me that the debtors' fiduciary obligations ought to take it in that direction. But if it is judicially estopped, it also seems to me that there ought to be parties out there who can raise it, who haven't been judicially estopped, if that's the case. If they can raise issues, you know, a la the Owens-Corning issues, because creditors' committees can substitute where the debtor can't bring preference claims, for example, surely they can object to claims objections, which aren't nearly as onerous to any particular creditor as a preference recovery. So I'm not sure why I don't have at least a party in interest without determining who that is right now who can object.

MR. WISLER: Understood, Your Honor, and that's an issue that they can raise in their brief and we can reply and we can discuss with Your Honor. I mean that's part of what I'm saying. Your Honor will decide this one way or another on the legal issues. We don't need discovery for Your Honor to decide the issue you just discussed. We'd like to have an opportunity to brief it and see what the debtor has to say, because we raised it. The other parties intervened. We want to see, you know, how's Your Honor going to rule on that.

THE COURT: But I'm not going to prevent anybody

from, in quotes, participating, i.e., observing or whatever when the discovery takes place in any event. So if discovery's going to go forward, I'm a little hard pressed to say why the debtors shouldn't be leading the charge on a claims objection issue. I'm having great difficulty with that concept.

MR. WISLER: Well, and I'm not here to argue that to you today, Your Honor. I, of course, can, but that's not what --

THE COURT: No, it isn't --

MR. WISLER: -- we were scheduled to do.

THE COURT: -- for today.

MR. WISLER: Well, you know, Your Honor can order discovery, but my problem is what is the scope. The debtor says they know what the scope is. It's very narrow. I don't necessarily agree with that scope, and that scope will be driven by what Your Honor rules on the legal issues.

THE COURT: All right.

MR. WISLER: Let me give -- so let me give you an example, unless -- I mean if Your Honor's going to agree with my schedule, I don't need to explain, but --

THE COURT: Go ahead.

MR. WISLER: Okay. There is a spectrum of claims that can be brought against Maryland Casualty.

THE COURT: Yes.

MR. WISLER: You -- on the one end of the spectrum

you have your classic direct claim, which is a claim by a claimant against a company, but they can't be brought against that company or doesn't need to be brought against that company, just brought against the insurance company. Okay. That's on one end of the spectrum.

The other is Mr. Lockwood's traffic accident in Libby, the one he described in his deposition that we've cited a couple times. And that is that someone employed by Maryland Casualty was driving an automobile in Libby, Montana outside the scope of its employment. There's a traffic accident. There's a lawsuit arising out of that. Maybe a claim gets filed against Maryland Casualty.

So somewhere within this scope falls Maryland's indemnity rights. We don't know where it is. That's for Your Honor to decide or some other court to decide some day. But somewhere within that it does.

Now, the debtor wants you to decide what's that scope. As we say, they want an advisory opinion. They want Your Honor to set a bar here and bar here. I don't know exactly how they're going to do that, but that's what they're asking you to do.

Well, what happens when there's a claim outside of one goal post? Do we still have that claim? Who's to decide whether a claim falls within those goal posts? If Your Honor accepts their request for an advisory opinion and you set the

goal posts, well, who then decides what claims go in there? Future claims, when they come in, are they gone? How could Your Honor decide that?

THE COURT: I think that's what bankruptcy courts do all the time --

MR. WISLER: I'm asking --

THE COURT: -- is determine claims.

MR. WISLER: Right. I'm sorry.

THE COURT: Is determine claims and whether claims are allowed and whether contingent, unliquidated, disputed, unmatured claims will or will not survive. That's what bankruptcy -- that's the meat and potatoes of being a bankruptcy judge.

MR. WISLER: Understood. If five years from now somebody files a claim against Maryland Casualty, and we claim it's within the scope of indemnity, you today and I today don't know what that claim is, so how can we decide whether a claim we -- that doesn't exist, that has not yet triggered an indemnity claim, therefore, that indemnity claim is not right. How can Your Honor determine the validity of that indemnity claim?

THE COURT: I'm not sure that the issue is the validity. Whether it would be an allowed claim against the estate and whether or not it would be treated under the TDP somewhere or fall into a class or not be discharged, that's

what bankruptcy courts do.

MR. WISLER: But they don't it before the claim is right.

THE COURT: Sure we do. We estimate claims all the time.

MR. WISLER: But they haven't asked for it. Let's be clear. They haven't asked for estimation. They've asked that all claims of Maryland Casualty be expunged forever, proofs of claim gone.

THE COURT: Okay.

MR. WISLER: Those claims are indemnity claims that arise out of claims that have not even arisen, so how could this Court decide whether those claims are valid today?

THE COURT: It -- well, okay. I think I've attempted to address that fact, but --

MR. WISLER: Right.

THE COURT: -- but maybe it's the basis for a legal argument.

MR. WISLER: It is, and until -- and Your Honor hasn't had a chance to read --

THE COURT: No, I haven't.

MR. WISLER: -- our response, and we're going to file briefs, and I -- it would be better to have this discussion about what the scope of discovery should be when Your Honor knows what those issues are and perhaps has ruled on them.

That's my point.

THE COURT: Okay. Well, I think if -- I think what I'm hearing from the debtor is that the issue that the debtor wants to pursue -- and maybe I'd better inquire to make sure this is the only issue the debtor intends to pursue -- is how the indemnities came to be, what the meaning of the indemnities is from the perspective of the entities who were involved in drafting the contracts to determine whether or not they're going to take the position that there is some ambiguity and, therefore, need an evidentiary hearing on the scope -- on the issue of the scope and language and interpretation of the indemnity. Now, is there something more, Mr. Donley?

MR. DONLEY: No, Your Honor, that's the scope of discovery we'd like to pursue.

THE COURT: Okay, so I understand Maryland is saying that you don't know yet what you need to do, because you haven't seen the reply papers, and -- but you've raised the issue as to which the reply papers need to be filed. Because if you hadn't raised the new issue, there wouldn't be a need for a reply, and I wouldn't be taking one.

MR. WISLER: Your Honor, that's -- we responded to their claim objection.

THE COURT: Yes.

MR. WISLER: Their claim objection said we expunge all claims, so we didn't raise any new issues.

THE COURT: Well, you've raised --

MR. WISLER: We simply raised --

THE COURT: -- the intervention.

MR. WISLER: -- defenses.

THE COURT: Well, you -- I thought you'd raised the intervention issue, which is a new issue. I mean --

MR. WISLER: Right, but that isn't subject to discovery.

THE COURT: Well, no, it's subject to reply papers.

MR. WISLER: Yes.

THE COURT: I was addressing reply papers.

MR. WISLER: I apologize, Your Honor.

THE COURT: Okay, so in that sense what I was saying is you already know what the issues are. The debtors have raised some, and Maryland's raised the rest, so you already know the issues. That's what discovery is to do. It's to eliminate the issues. So what is it that's missing?

MR. WISLER: We argue, as I've just somewhat articulated, that this is an advisory -- they're seeking an advisory opinion. If Your Honor, for instance, rules against that, then we need to know, for instance, what claims -- Maryland Casualty has a spectrum of claims. We raised our indemnity rights. Those get triggered by claims against us that we don't control. As each claim against Maryland Casualty arises, that may or may not trigger an indemnity claim. If it

does, now we have a claim that we will make.

So what claim is it that the debtors -- that has triggered an indemnity claim that the debtors now want to have expunged? So we need to know what those claims are.

THE COURT: I think what the debtor's saying --

MR. WISLER: This is the right --

THE COURT: -- is that the debtor wants to expunge any and all indemnity claims that arise under this indemnity outside the scope of the particular provisions of the contract. So I think what I'm hearing is it's a contract interpretation issue.

MR. WISLER: That is not --

THE COURT: For example -- I just want to make sure I understand, Mr. Wisler. For example, if the contract is clear that environmental claims are covered by the indemnity, then that should be a -- and the parties agree the contract's clear, then that's a dead bang issue. The indemnity claims are covered. If the -- if there is not clear language, for example, that tort claims are covered, then the issue is are tort claims covered. If the Court determines they are, then as and when they arise, Maryland can pursue its indemnity claim based on the underlying tort claim against the estate. If not, Maryland can't, and they'll be expunged.

So I think the issue is not specific claim-by-claim matters. It's the scope of the indemnity and does it apply to

that spectrum of claims, any of which Maryland Casualty may raise against the estate? I think that's what I'm being asked to determine.

MR. WISLER: Well, let me read you the --

MR. DONLEY: That's correct, Your Honor.

THE COURT: Okay.

MR. WISLER: Let me read you the end of their claim objection. "The debtors respectfully request that this Court disallow all of the proofs of claim filed by Maryland Casualty." All of them.

THE COURT: All right.

MR. WISLER: Well, what are those?

THE COURT: All of the proofs of claim.

MR. WISLER: Well, there are no other claims.

THE COURT: Well, then you know what you've raised in the proofs of claim.

MR. LOCKWOOD: Your Honor, for the record, Maryland Casualty identified three petition -- pre-petition lawsuits in its proof of claim brought by certain claimants, the Libby Claimants, against Maryland Casualty as forming a or the basis for the proof of claim. There's nothing hypothetical about those. There's nothing speculative about them. They were filed in courts, and Maryland Casualty was a defendant, and Maryland Casualty based its proof of claim in whole or in part on those three lawsuits, and those are examples of the type of

claim that the debtor is arguing it has not indemnified Maryland Casualty against.

So there's a perfectly concrete dispute between the debtor and the ACC and the FCR, and Maryland Casualty, as to the scope of the indemnity, as framed by Maryland Casualty's own proof of claim.

THE COURT: Okay. Well, if it's -- I'm sorry. I was somewhat off on the wrong tangent, I think, by the argument that all claims at some point in time may come up that were being asked to be expunged. If it's limited to the proofs of claim, then, of course, this is an appropriate process to go through. I mean Maryland's proofs of claim are filed. So if the debtor's saying the claims that arise in the proof of claim are not valid against the estate, that's discreet litigation.

MR. WISLER: Your Honor, I think -- as I said, I think this is a better argument to present to the Court once Your Honor's read their objection, our response, and perhaps any reply papers. All we're suggesting is that we have this discussion on June 7th not today. I'll leave it at that, because I don't -- wrestling with these issues without Your Honor having the benefit of what we filed --

THE COURT: All right.

MR. WISLER: -- is difficult.

THE COURT: Okay.

MR. WISLER: That's --

THE COURT: Is --

MR. WISLER: So that's our request.

THE COURT: Is there some reason why we can't do this argument on whatever the legal issue is that needs -- that apparently needs to be addressed on June 7th and do discovery thereafter? I mean if it's claims objection, it's not going to affect the plan confirmation in any event. So it may affect where the claims go to the extent there are valid claims, but it's not going to affect confirmation. So is there some reason why the discovery schedule can't simply be addressed in June?

MR. DONLEY: I just have a personal scheduling difficulty. I have an appellate argument that day, Your Honor, June 7th.

THE COURT: Well, you folks ought to be able to work out -- if I told you we're going to do the argument June 7th, you should be able to work out a discovery schedule that you can agree on for thereafter, because you can just hypothetically assume that whatever the legal issue is goes against Maryland just so you can get to a discovery schedule not -- I'm not making findings. I haven't even read the -- read Maryland's reply. But just so you can get to a discovery, make that assumption. If it's not necessary, there won't be a discovery schedule.

MR. DONLEY: Yes, the answer is either way would be fine, Your Honor. We were hoping to get going. Now we could

wait until June to start the discovery and have it ready to go at such time. Either way is fine.

THE COURT: I think it might -- may make sense, so that I have the benefit of everybody's analysis to address the discovery schedule in June. But I think you folks ought to be able to work one out again on the assumption that you'll need one. If you don't, then you'll have spent an hour or two working on a schedule that you don't need. So I don't think in the grand scope of things it will matter much. I'll continue Item 12 to June 7th.

MR. GLASBAND: Your Honor --

THE COURT: And if you're able to submit a discovery schedule on a certification of counsel in the meantime, then please do it. Yes, who's speaking?

MR. COHN: Yes, Your Honor, this is Daniel Cohn on behalf of the Libby Claimants. I just wanted to address a technical point, which is that subject to whatever ruling you might later make on who's entitled to be heard on this, we would like leave to have the same 30-day deadline as the debtor to reply to Maryland Casualty's response to the objections.

THE COURT: Oh, yes, anybody who's attempting to intervene is subject to that same schedule. I think that's the purpose of the reply papers. So yes, all of the people or entities that joined the debtors' objection have that same opportunity, and if anybody intends to join Maryland's

position, they -- they're on Maryland Casualty's schedule.

MR. COHN: Thank you, Your Honor.

MR. DONLEY: One other request, Your Honor -- John Donley -- on our reply papers. Their judicial estoppel briefing was very extensive. I think it was 28 or 30 pages, and I know normally replies are limited to five pages, but we'd ask -- I -- and I don't like to write anything longer than it needs to be, but we'd ask for something similar in length just to address the issues they've raised fully.

THE COURT: You don't need 28 papers (sic) on judicial estoppel. Do you really?

MR. DONLEY: Well --

MR. FREEDMAN: Ours was five pages, Your Honor.

MR. DONLEY: Oh --

THE COURT: Five pages? I'll give you ten pages for a reply. Surely, that should be -- is there another issue that you're going to address other than judicial estoppel? The intervention -- the intervention motion.

MR. DONLEY: The debtor doesn't need -- see a need to address the intervention, Your Honor.

MR. LOCKWOOD: The ACC and the FCR obviously wouldn't. I rather suspect Mr. Cohn would, so --

THE COURT: All right, so --

MR. LOCKWOOD: It's a little -- there's -- the intervention issue as such has been sort of tendered here in

open court orally.

THE COURT: Oh, it's not in the brief?

MR. LOCKWOOD: It's not.

THE COURT: I'm sorry. I haven't seen Maryland's response.

MR. LOCKWOOD: To the best -- I don't -- we filed joinders to the claim objection, and there's been no motion to strike the joinders, no motion to say we don't have standing to effectually make a joinder, so that was one of the reasons I was discussing earlier the -- how we could be having an argument on judicial estoppel where we would be arguing that it doesn't apply to us, and our opponent is arguing without ever having filed any papers that we don't have any standing to even make the argument.

THE COURT: I see. I'm sorry. I haven't seen Maryland's response, so I apologize for being a day late and a dollar short here. I am. I thought, Mr. Wisler, you had raised this issue in your response.

MR. WISLER: The debtors filed an objection. We filed a response.

THE COURT: Yes.

MR. WISLER: Subsequently --

THE COURT: After that.

MR. WISLER: -- joinders were filed.

THE COURT: All right, so are you going to be

opposing the joinders?

MR. WISLER: Yes.

THE COURT: Okay, then --

MR. WISLER: But I -- if the parties that want to join are going to file briefs anyway, then they might as well address the basis for their joinder in those and we can reply.

THE COURT: Well, no, I think if you're going to object, as -- at least as the Committee, I'm not exactly sure why when the Committee I think is affected by both classes why the Committee would not be an appropriate party. As to the others, I'm not so sure, but the Committee, it seems to me, ought to, without any concern, be an appropriate party to look at this issue.

And as to the others, I just don't know. I don't know whether the FCR is actually involved in both classes. I just don't remember at the moment, and I am not sure about Libby either. Particular entities as opposed to the Committee function joining is a different issue from the Committee itself having standing to take a look at claims objections. And to the extent that the Committee thinks the claim is being asserted against a class in which it has an interest, I'm not sure why it's not a party in interest to raise an objection.

So just as I sit here, without having seen anything on this issue, it seems to me the debtor and the Committee ought to be pretty solid in terms of taking a look at this.

The others I don't know about. I simply haven't had to take a look at that issue.

MR. WISLER: Well, let me make this suggestion then, Your Honor. On the day when -- well, I see Mr. Donley rising. Maybe we should talk about it, because I think we could probably work that part out.

THE COURT: If you file -- yes, if you have 30 days to address this issue and the other parties have the 14 you would've had to reply to address it, it seems to me that should work, as long as I don't have any additional replies and surreplies, and, frankly, on this issue, I don't think I should. There's not that much case law on the subject.

MR. WISLER: That's fine.

MR. DONLEY: It seems reasonable to us, Your Honor. I just wanted to ask one favor of the Court. I checked my notes. I did read their response. It was 28 pages not 5 and all but --

THE COURT: No, I think he was saying 5 on the issue of judicial estoppel.

MR. DONLEY: It was all judicial estoppel. They only had one or two pages, at most, on other issues at the end. It was like 15 pages of case law, 10 pages of quotes from briefs. We just need a little space to be able to respond to that, and maybe not the same length, but if we could get --

THE COURT: Okay. 15 pages. If you need more than

15 pages, I should be getting some entirely separate briefing process. This is --

MR. DONLEY: 15 would be --

THE COURT: -- a reply.

MR. DONLEY: 15 would be terrific, Your Honor.

THE COURT: All right. Mr. Wisler, yours is limited to 5, your surreply, because all you're going to be replying to is their reply, so you've got 5 pages on a surreply. They've got 15 on a reply.

MR. WISLER: That's fine, Your Honor.

THE COURT: Okay. One second.

MR. LOCKWOOD: Your Honor, just for --

THE COURT: Wait, Mr. Lockwood.

(Pause)

THE COURT: Yes, sir.

MR. LOCKWOOD: Just for logistical question, I'm not sure whether we're having what amount to two-track briefing here --

THE COURT: Yes.

MR. LOCKWOOD: -- in which he's going -- Maryland Casualty's going to make some kind of motion about why we aren't entitled to -- don't have standing to participate in the claims objection at the same time the briefing is going on on judicial estoppel. What I would propose, if that's the case, and it sounded like that was the case, that we -- we, the

Committee and the FCR, file a reply at the same time that the debtor is filing a reply on the judicial estoppel point limited to the question of if judicial estoppel were applicable to the debtor, would it also be applicable to the debtor's estate to the extent that the other creditors of that estate would be adversely affected --

THE COURT: All right. That's fine.

MR. LOCKWOOD: -- by the application of judicial estoppel. I mean it's a backdoor way of addressing standing, to some extent, but at least it gets our views on the judicial estoppel question in front of the court at the same time that Maryland Casualty and our responsive briefing on the right to intervene is before the Court, and you can -- you can consider both at the same time.

THE COURT: That's fine.

MR. LOCKWOOD: Is that okay?

THE COURT: Yes --

MR. LOCKWOOD: Thank you, Your Honor.

THE COURT: -- that's fine.

MR. FRANKEL: Your Honor, could I just -- this is Roger Frankel for the FCR. If I could just clarify, while we're happy to have Mr. Lockwood carry our water for us, I think it's clear under the plan and the objection to MCC that the PI FCR and the ACC are in the same boat.

MR. LOCKWOOD: Oh, I meant to suggest that we were

going to -- we would file the judicial estoppel brief jointly, the FCC -- FCR and the ACC.

THE COURT: Okay. That's fine. To make sure I understand, 30 days from now I'm going to get what I will call the reply briefs on the judicial estoppel issue from any party who's going to submit one, and 14 days thereafter I'm going to get the surreply on that issue. Okay. 30 days from now I'm going to get Maryland's motion and brief concerning I'll call it the standing -- the party in interest standing of entities other than the debtor to join in the debtor's objection, and 14 days thereafter I'm going to get the responses. Both of those issues will be argued on June 7th. Is that everybody's understanding?

(No verbal response)

THE COURT: Okay, then I'm on the same page. Let me make a note to make sure that I remember what I'm getting.

(Pause)

THE COURT: Okay. Thank you.

MS. BAER: Your Honor, would you like an order setting forth those dates?

THE COURT: That would probably be a good idea.

MS. BAER: Will do so.

THE COURT: Thank you. Mr. Freedman.

MR. FREEDMAN: Yes, Your Honor. So we've been chatting about what would best help the Court in terms of

moving this process forward, and frankly, we have a couple of concerns, because, obviously, the plan proponents want to move the process forward as quickly as possible. We also understand and are very desirous of giving the Court something that is simple and straightforward, because this is such a complex case, and there's so many different dimensions of issues that are before the Court.

I would point out that the charts which were filed, in particular, the one that was filed as of March 30th, is organized to go through the various findings and conclusions. In other words, each column in that chart lays out -- the first column lays out a necessary finding that this Court would need to make in order to properly confirm the plan. The next column identifies what the objections are and where those objections can be found. And the third column identifies the plan proponents' responses to those objections.

So in that sense the Court actually does have now before it a document which we worked hard to try and set forward in a simple way as we could that does what the Court asked for. And followed -- and that is followed by an Appendix A, which identifies all of the objections that have been settled and resolved and the nature of the resolution, a summary of those resolutions.

Within the chart itself is -- are various boxes, if you will, where an objection was pending, and it has been

stricken out because of a settlement, so that the main chart shows objections that are no longer pending, and then Exhibit A identifies in a different way those same objections and the nature of the resolution, all of which has been filed by the -- for the Court through various plan modifications or settlement agreements.

And finally, there is also an Appendix B to the chart which is a summary of remaining confirmation objections in kind of a bullet point form. If it would help the Court, I can hand up my copy of this to --

THE COURT: I have it.

MR. FREEDMAN: Oh, okay. So we have through that document I believe in one format all of the information that the Court was asking to receive.

Now, what we would propose to do, if the Court thinks that this additional step would be helpful, is to go through the proposed findings that we submitted and identify which ones are uncontested, either because they were not contested or because of settlement. That's effectively already what's in the chart, but we can set it forth in another format if the Court thinks it would be helpful.

THE COURT: Well, this chart links to the trial briefs to the objections that were filed not to the evidence. That's what the chart does. The proposed findings link to the evidence, and, as a result, I haven't attempted to match this

up with the proposed findings. But it seems -- and I'm looking now to see whether the evidence is cited in either Appendix A or B, and I'm not seeing that it is, so I think -- wait one second. No, it cites -- the appendices cite back to the objection charts but not to the evidence, and the objection charts cite to the legal argument but not to the evidence. The proposed findings should be dealing with the evidence. That's why I'm not sure how these -- the chart matches up with the proposed findings.

I understand when you're saying Column 1. Let's just look together for a second. If I turn to the very first page of the chart that was filed on March 30, Number 1 says, "Good faith, 1129(a), plan must have been proposed in good faith and in accordance with the law." Obviously, that's a finding the Court has to make.

And the first column then states why the plan proponents feel that the -- or I'm sorry. It states essentially the legal proposition. The second column states the objection, and the third states the response. But all of the citations are not to the evidence that support the proposition but to the legal argument that support it.

MR. FREEDMAN: Well, they actually -- it's -- by reference, it's to both, because we cite the pages in our briefs, and at the Court's instructions all of these briefs were hyperlinked --

THE COURT: Contain the findings.

MR. FREEDMAN: -- to the evidence.

THE COURT: All right, so if I, for example -- I don't have this here. If I checked, for example, again just looking at the first box, the third column, "PP Main -- Plan Proponents' Main Pretrial Brief at 57 and Post-trial Response at 2 to 3." Those are going to be proposed findings not legal argument.

MR. FREEDMAN: Right.

THE COURT: All right. Well, if that's the case, I'm not sure I need anything else. Let me check with my law clerk. We'll take a brief recess and see whether or not that's all I need. I don't want you to do additional work if I don't need it.

MR. FREEDMAN: Thank you.

MS. BAER: And, Your Honor, it's the post-trial briefs that have the proposed findings in them, because those are the ones that were filed after the trial that point to the evidence. So you're -- when you look at the response column, you've got both the pretrial brief where it was discussed, and then the post-trial which would have the evidence and the proposed finding.

THE COURT: All right, so in the pretrial brief it's the argument. In the post-trial it's the finding.

MS. BAER: Right.

THE COURT: Okay. One second.

(Pause)

THE COURT: Okay. All right. Before we start -- I'll take a break at the end of the entire agenda for just a few minutes to check this with my law clerk before we start the trial, and then I'll let you know whether I need anything more.

MR. FREEDMAN: Okay, Your Honor, Mr. Pasquale is suggesting that at least as to the materials submitted in connection with the lender arguments, they may not have been submitted in the form of findings.

THE COURT: Actually, a number of them haven't been submitted in the form of findings. The plan proponents were but not all other parties did.

MR. FREEDMAN: The plan proponents understood that those were the instructions that the Court gave, and so we fashioned our briefs in that format. Apparently, the lenders did. But I will say that what the chart does is, particularly with respect -- as Ms. Baer clarified with respect to the post-trial memoranda, it identifies the portions of the post-trial memoranda that addressed each of these issues in Column 1, and within each of those post-trial memoranda all the parties cited their evidence. So the references to the evidence are captured by the pages that are identified on the chart.

THE COURT: Okay. Mr. Pasquale.

MR. PASQUALE: Thank you, Your Honor. My

recollection, Your Honor, is at the time the Court did not and specifically said it did not want findings, it wanted -- I want to use the word different than the pretrial briefs Your Honor will recall. You didn't want repeated legal argument. You wanted specific citations to the arguments and then to the evidence, and that's, of course, what we gave you. You did not ask at the time for specific findings of fact and conclusions, because there were so many open issues, and you said that wouldn't be helpful to the Court.

So Mr. Freedman's right, the evidence is cited in our briefs. It's all there for the Court to see. I was just concerned sitting in the back hearing the discussion that Your Honor -- the references to findings of fact that the Court was being -- was a bit confused over what it had, and I just wanted to be clear that you do have specific citations to the evidence --

THE COURT: I am --

MR. PASQUALE: -- tied back to the legal argument.

THE COURT: I am confused about what I have --

MR. PASQUALE: Right.

THE COURT: -- because there have been so many changes that have come in since the time that we -- I heard the evidence and what I thought I was getting, that I don't know what I have. That's the truth. And whether I'm going to be able to get through it in some organized fashion with what I

have, I don't know yet. I haven't really started down that track.

MR. PASQUALE: One thing that is clear is as to the Committee and bank lender issues, none of that has changed, Your Honor --

THE COURT: Yes.

MR. PASQUALE: -- at any point in this process. Thank you, Your Honor.

THE COURT: I've been hopeful, Mr. Pasquale.

MR. PASQUALE: Thank you.

MR. FREEDMAN: Your Honor, again, the plan proponents are absolutely willing to do anything that the Court finds will be helpful. My only point in these comments is to sort of direct the Court to what we have provided, which we thought would actually give the Court what it needed to proceed in that direction.

And I just have two other comments I'd like to make before -- if I could, before the Court checks with the clerk. One is to clarify what was actually filed on March 19th. What was filed on March 19th is a amended -- oh, excuse me -- is a modified plan, if you will. That document, the document that was filed by -- on March 19th, was filed as a black line, so that it shows the changes from prior versions of the plan. We did not file a single clean document that said the proponents' plan as of March 19th. We'd be happy to file that, and that

can be done very quickly, if the Court would be -- prefer to be working from a clean document as opposed to the black line documents --

THE COURT: Yes.

MR. FREEDMAN: -- that were filed on March 19th.

THE COURT: I would prefer to work from a -- from one final document, something that I don't have to worry about strikeouts and black lines and edits. I would prefer to have a clean document, so I know what the final version actually is.

MR. FREEDMAN: That's fine, Your Honor, then we will submit that immediately.

The other thing is that if I could just go back to the thought that it might be helpful to the Court to see a proposed confirmation order. The reason why we think -- the plan proponents think that that could be helpful to the Court is, because the nature of this plan is such that there are a lot of intricate findings and rulings of law that we ask the Court to make as part of confirmation of the plan. And we though that it would be helpful for the Court to actually see the order that we believe would accomplish that purpose in terms -- so that when the Court is going through the process of considering confirmation, you could actually see what the --

THE COURT: That's fine.

MR. FREEDMAN: -- plan proponents are striving for. So to the extent that the Court would allow us to, we we'd like

to file a proposed order, too.

THE COURT: You can always a proposed order. I'm happy to take a look at the proposed order.

MR. FREEDMAN: Well, with that, Your Honor, we'd be happy --

THE COURT: If you're going to do it, cite back to the record, so I know where it is that you're citing me to the record in the proposed order for finding and --

MR. FREEDMAN: Well, there again we have sort of the dichotomy between the proposed findings and conclusions which, I respectfully disagree with Mr. Pasquale, at least from the plan proponents' standpoint, we believe we filed, but we'd be happy to file amended renewed ones, if the Court thinks it'll be helpful, and the separate order that the Court would have to enter, which actually decrees the various things that are necessary for confirmation. We understand that those would appear in two different documents, one proposed findings and conclusions and one a proposed order. And so what we're talking about at this point is to let the Court see what the order would look like.

THE COURT: The order would incorporate proposed findings and conclusions. I mean, otherwise, you can just have an order that says the plan's confirmed --

MR. FREEDMAN: Well --

THE COURT: -- as stated in the proposed findings and

conclusions.

MR. FREEDMAN: It's more intricate than that.

THE COURT: All right. Submit whatever you want to submit, Mr. Freedman.

MR. FREEDMAN: Thank you, Your Honor. That's all right. I just -- that's what I was thinking. If we could request that the Court then consider -- confer with the clerk, if you think that that's appropriate, so that we can get the appropriate instructions and whether we need to file something else and how -- and what it would look like.

THE COURT: All right, so you're going to file a clean version of the plan.

MR. FREEDMAN: That's right.

THE COURT: And a proposed confirmation order, and when is that coming in?

MR. FREEDMAN: The clean version of the plan will be filed before the end of the week, and the clean -- and the proposed order, we could file that by the end of next week at the latest.

THE COURT: All right. Are there any other issues on today's agenda or anything anyone wants to raise before I take a ten-minute recess other than the trial, which we will start after a brief recess? Ms. Baer.

MS. BAER: Your Honor, I have one matter to attend to that's pretty much for the convenience of all parties. Our

next omnibus hearing is on May 3rd. Your Honor, the preliminary agenda is due today. The objection deadline was last Friday, and there are no contested matters. We will be submitting certificates of counsel on all of the matters that were on the agenda. So assuming that Your Honor would enter those orders, there's actually no need for the omnibus hearing on May 3rd.

THE COURT: Okay.

MS. BAER: And, Your Honor, I'm not sure how you want to handle that. Perhaps after the orders are entered, if, in fact, they are entered, it would be canceled at that time.

THE COURT: I think that would be fine, Ms. Baer. You'll know when all of the orders have been entered, if they all are. You could just simply do a notice that cancels the hearing, otherwise, we could set it up telephonically in the event that there is still something left.

MS. BAER: Your Honor, once the orders are entered, then I'll contact your chambers, but I just wanted everybody to know that it's extremely unlikely that we will be seeing you on May 3rd.

THE COURT: All right.

MS. BAER: Thanks.

THE COURT: Okay. Thank you. Anything else before I take a brief recess?

(No verbal response)

THE COURT: All right. We'll be in recess for ten minutes.

(Pause)

THE COURT: Oh, could I -- may I ask the parties for the trial, can you give me an estimate of how long it's going to be? Judge Gross has a proceeding at 1:30. If we're going to be longer than that, we need to move.

UNIDENTIFIED ATTORNEY: A couple days, Your Honor.

(Laughter)

UNIDENTIFIED ATTORNEY: I would think 20 minutes, 15 to 30 -- 15 to 30 minutes is what we estimated, and I think that's probably correct.

THE COURT: Mr. Speights.

MR. SPEIGHTS: I agree, Your Honor.

THE COURT: Wow.

(Laughter)

THE COURT: Okay. We'll be in recess for ten minutes. Thank you.

(Recess)

THE CLERK: All rise.

THE COURT: Please be seated. I believe that we have everything we need in terms of the charts and the analysis of the evidence. If, as we're actually going through it, I see that I'm incorrect and we need something more, we'll do an order. But I think for now we're okay.

MR. FREEDMAN: So with the Court's permission, then we will then proceed to file a clean plan, as we indicated, by the end of this week, and a proposed confirmation order by the end of next week.

THE COURT: Yes, sir, that's fine.

MR. FREEDMAN: Thank you, Your Honor.

THE COURT: Okay. Anything more before we start the trial?

(No verbal response)

THE COURT: Okay. Everyone else is excused. Thank you.

MR. LOCKWOOD: Thank you, Your Honor.

(Pause)

THE COURT: Okay. We are back in the W.R. Grace matter on a trial set for objections to two Canadian property damage claims, Numbers 11627 and 12476, and on the April 19th agenda this is agenda Number 15, and it refers to Docket Number 23724. May I get entries of appearances just for counsel who are going to be doing any presentation regarding the trial, please?

MR. RESTIVO: Your Honor, James Restivo for the debtor.

MR. SPEIGHTS: Dan Speights for the Canadian claimants, Your Honor.

THE COURT: Okay, Mr. Restivo.

(Pause)

THE COURT: Mr. Speights.

MR. SPEIGHTS: Your Honor, I mentioned to Mr. Restivo and he kindly gave me the podium to simply preserve our objections on two matters. First, Your Honor, we previously took the position with the Court that the debtors have not objected to the Canadian claims on the grounds of the ultimate statute of limitations. Your Honor rejected that contention both at one or more hearings and in your previous order on the 35. I just wanted to reserve it on behalf of these two claimants as well.

Secondly, Your Honor, we previously took the position that the Canadian claimants are part of the Anderson class. Your Honor, of course, has denied certification of the Anderson class, and again, I just wanted to preserve our position on that as well.

THE COURT: All right. Thank you.

MR. SPEIGHTS: Thank you, Your Honor.

THE COURT: Mr. Restivo.

MR. RESTIVO: Your Honor, we are here today to try the Canadian limitations period issue with respect to two asbestos property damage claims. With respect to those claims, we have two exhibits that we will move in a minute, and there are no objections to authenticity of those two exhibits.

Your Honor, the ultimate statute of limitations

period we will be trying is a 30-year period, which we believe is triggered by installation of the product. There is also a regular limitations objection which is six years in Canada. These two claims were subject to our motion on the regular statute of limitations. The parties then asked the Court not to rule on the regular statute of limitations, and ultimately, those cases were settled for a variety of reasons. These two were not settled even though some of us thought they were settled. So we have also raised the regular statute of limitations. We believe that is also triggered by installation under PriVest.

But in talking about this before the hearing, before the trial with Mr. Speights, he indicated that the plaintiffs are here -- claimants are here to try the ultimate statute of limitations, and so we just want the record to be clear that we do have on file the original motion for summary judgment on the regular statute of limitations. We will not be trying that today, even though we believe the evidence is the same given Mr. Speights' position. Obviously, if the Court rules in favor of our position on the ultimate statute, the regular statute's irrelevant as it was with respect to the Court's prior ruling on the ultimate statute, but we want the record to make sure that we have preserved our objection based upon the regular statute.

THE COURT: All right.

MR. RESTIVO: Secondly, Your Honor, we provided to Mr. Speights on Friday, consistent with the 24 hours in advance rule of this court, a set of proposed findings of fact and conclusions of law on both of these claims. They are very short, but some of them -- some of the conclusions of law deal with the regular statute of limitations, since we believe it's the same. We would like to provide to the Court our proposed findings of fact and conclusions of law which we have already provided to Mr. Speights and just ask the Court to simply ignore the conclusions of law relating to the regular statute of limitations.

THE COURT: All right.

MR. RESTIVO: May I hand this to the Court?

THE COURT: Yes. Thank you.

MR. RESTIVO: Your Honor, we move into evidence Exhibits -- Exhibit D-1, the claim file for Claim Number 11627, and Exhibit D-2, the claim file for Claim Number 12576.

THE COURT: Mr. Speights, is there any objection?

MR. SPEIGHTS: Well, I certainly don't object to the authenticity of those documents. They are the claim forms that we submitted. I believe we will argue that most of the information contained in that -- in those documents is irrelevant to the issue on the ultimate statute of limitations. So, technically, I would object on that grounds of relevancy, but I understand Your Honor will have the claims before you,

and we can deal with that during the argument following the evidence.

THE COURT: All right. That's fine. I will admit them subject to a determination of relevance with respect to the information contained therein. Let me make a note, please. That's Exhibits D-1 and D-2 are admitted subject to a determination of relevance regarding the ultimate statute of limitations. Okay.

MR. RESTIVO: And, Your Honor, by way of a opening statement, the evidence in those exhibits, taking them separately, is as follows.

With respect to Claim Number 11627, which is a senior secondary school in School District 68 called Nanaimo-Ladysmith, the evidence will show that the property is located in British Columbia, Canada. That the claimant purchased the property on January 9, 1951. That's at Page 03 of Exhibit D-1. That the claimant did not install or have anyone install on its behalf the asbestos-containing product for which it's making a claim in this case, and, therefore, that the asbestos-containing product on this claim was installed before January 9, 1951. January 9, 1951 is more than 30 years before the debtor filed their Chapter 11 cases on April 2, 2001, and as a result of that, this claim was filed more than 30 years after this product was installed as shown by Exhibit D-1, therefore, consistent with the Court's prior ruling. Therefore, this case

is barred by the British Columbia ultimate statute of limitations.

Claim Number 12476 is a theater and related rooms of a theater by the City of Vancouver. That is Claim Number 12476. I believe the theater in the claim form is known as the Queen Elizabeth's Theater and Playhouse. The claim form establishes that this property is located in British Columbia, Canada. That the claimant purchased the property on July 1, 1956. That the claimant did not install or have installed the asbestos-containing product for which it is making a claim. That, therefore, the claimant is making a claim on asbestos installed in the property before July 31, 1956, and July 31, 1956 is more than 30 years before the debtor's filed their Chapter 11 case, and, therefore, the claim is barred by the 30-year ultimate statute of limitations.

Lastly, Your Honor, there are some attachments filed with the claim form. This claim form was initially filed on March 30, 2003. It was supplemented on May 16, 2005. It was further supplemented on January 20, 2006 and on September 25, 2006.

In sum, of the supplemental material, at least one report suggests that the room this product was in was a room that was added six years after purchase of the building, some time in 1961. That is not consistent with the claim form, but even if that were correct, the 30-year statute would've run 30

years after 1961 or 1991, and, therefore, even if the installation period is a little bit ambiguous because of one attachment, it is either the construction of the original building in 1956 or the construction of some other something in 1961, both of those being barred by the 30-year ultimate statute of limitations. That concludes our case, Your Honor.

THE COURT: Mr. Speights.

MR. SPEIGHTS: May I assume, Your Honor, that debtors rest?

MR. RESTIVO: The debtors rest, Your Honor.

MR. SPEIGHTS: And, Your Honor, at this time the Canadian claimants would make a motion for directed verdict. If it would expedite matters, Your Honor, if you should deny my motion for directed verdict, I'm not going to offer any evidence, so we can proceed to argument on both at the same time.

THE COURT: Well, I think I have to deny it based on my prior rulings. I'm not aware of any appellate decisions on those matters. Have there been any, before I deny it, on the basis of my prior rulings? It would nice to know.

MR. SPEIGHTS: Well, I'm not aware of any additional Canadian appellate rulings, but I can just -- let me address the motion for directed verdict, and then I can say -- I can repeat myself in the event that you deny it.

The only appellate ruling that I'm aware of in Canada

is the one that the debtors do not focus on, and that is the appellate ruling in PriVest. PriVest, of course, was a trial court decision, and I don't think it has precedential effect, although I understand Your Honor has looked for that decision as being some precedent in the absence of anything else in Canada.

But the PriVest decision was appealed. It was affirmed on appeal, but as I read the appellate decision in Canada, it was careful to say we're ruling on these facts and not trying to decide precedence for all other cases, and I think that's important in that case even though it's not an ultimate statute of limitations case. Counsel uses it in this matter as well as to when a cause of action arises. I think that's important, because we don't agree with the way that the plaintiffs tried the case in Canada, and we don't think we are bound by statements that trial counsel in the PriVest case made in Canada.

But to answer your direct question, that is the only appellate decision in an asbestos property damage case in Canada that I'm aware of. Your Honor, we're also -- we do also have, however, the appellate decision in this bankruptcy, and that is the District Court's decision in the California case, which we think is instructive, number one, on the very issue in dispute here, albeit not Canada law. But we also think that the Court has a threshold issue in this case as to whether

Canada law applies or Delaware law applies.

That issue was not argued in your dealing with the 35 cases, but Grace has consistently taken the position throughout this bankruptcy that on limitations issues Delaware law applies, and Your Honor in the California case agreed with that. The District Court had the temerity to disagree with Your Honor on that. Grace did not take an appeal on that, and now you have these two California -- these two Canadian claimants taking the position. I represent a lot people, and a lawyer can take different positions for different clients. For these two clients I agree with Grace that the Delaware law should apply.

THE COURT: But I've been beaten down on that. I think Delaware law should apply in a lot of circumstances, too, Mr. Speights, but --

MR. SPEIGHTS: Well --

THE COURT: -- as one of my colleagues says, my learned colleagues in this case, I -- I guess -- I'm not sure if Philly is actually east now. I'm accustomed to sitting in Pittsburgh, and they talk about the District Court when there the Appellate Court judges in the east have disagreed. So I'm not sure where we sit geographically, but, in any event, my learned colleague has disagreed.

MR. SPEIGHTS: And I appreciate Judge Buckwalter's view, which are consistent with some views, I take it, it don't

representing other claimants before you, however, I will just say that eventually one day this case could end up in the Third Circuit, and so I need to protect my record of course on this. I understand Your Honor's reluctance to disagree with Judge Buckwalter today.

But my legal position is, number one, Delaware law should apply, and they haven't met their burden on Delaware law that these claims would be barred, and, number two, if we have to go to Canadian law, and I understand Your Honor's ruling, and that's why I will not be very long-winded, however, it seems to me that the statute on its face is absolutely clear. The ultimate statute for British Columbia -- and, as Your Honor knows, each one of these statutes differ among -- from province to province in Canada, but the one in British Columbia, and you only had, I believe one British Columbia claim before you in your previous order, says 30 years from the date on which the right to bring the action arose.

So Mr. Restivo is arguing with some authority from Your Honor that the -- that these two British Columbia claimants had the right to bring asbestos property damage cases more than 30 years ago, and I believe that that is not established in Canada.

Again, PriVest is one trial court case which the Appellate Court says is not precedent for anything, in my view, but that case. There's a mixed factual presentation. There's

a legal theory the plaintiffs took, which is not consistent with the way we try the cases down here, and we are now instructed by the same decision, and which Your Honor, of course, is going to accept in the choice of law issue, but the same decision on an analysis of when does an asbestos property damage case arise.

And Judge Buckwalter says not until there's been injury, and there's no injury until -- and we could start talking about what the until makes, and Mr. Restivo, I don't believe, has shown, representing the debtors, that there was an injury more than 30 years before this bankruptcy was filed. In fact, he would be in an interesting position trying to prove that his product caused injury more than 30 years before the bankruptcy applied.

So in summary in support of the motion for directed verdict, Your Honor, I don't believe that they have shown that the case -- the claims are barred under Delaware law, and I don't think they have shown that there was injury more than 30 years before the bankruptcy was filed, and that mere installation is not injury, and I don't think they could have brought a lawsuit more than 30 years before the bankruptcy applied -- was filed. Thank you, Your Honor.

THE COURT: All right.

MR. RESTIVO: Very quickly, Your Honor. The regular statute of limitations in Vancouver begins on, "the date on

which the right to do so arose." The ultimate statute of limitations in Vancouver begins using the same language, "the date on which the right to do so arose." PriVest was a Vancouver case. PriVest ruled that the date on which the right to do so a rose meant with respect to Grace's Monokote, that the right to do so arose on the date of installation.

This Court correctly ruled that that holding in PriVest is equally applicable to the exact same language under the ultimate statute, and under the law of this case for the reasons set out in this Court's prior opinion, the judgment, the verdict, the ruling should be in favor of the objections and these two claims expunged. Thank you, Your Honor.

THE COURT: Mr. Speights, I'm not sure. You said you were not proffering any evidence. Are the claimants then resting?

MR. SPEIGHTS: If you deny my motion for directed verdict, I will, Your Honor.

THE COURT: Okay. Yes, I am denying the motion for directed verdict, simply because I believe that the issue is identical to the issue with respect to the one British Columbia claim that was involved in the 35, and I don't see a distinction having looked at -- and I thank you for the binders in advance. I did have a chance to go through them. I don't see any material distinction in the claim that was at issue in the 35 and here with respect to the application of the ultimate

statute of limitations and when it began to run. So yes, the motion for directed verdict is denied.

MR. SPEIGHTS: Claimants rest, Your Honor.

THE COURT: All right.

(Pause)

THE COURT: Mr. Speights, do you have any additional argument?

MR. SPEIGHTS: No, Your Honor.

THE COURT: All right. Do you, Mr. Restivo?

MR. RESTIVO: No, Your Honor.

THE COURT: Okay. Well, of course, I think, with all due respect, that Judge Buckwalter was in error, but nonetheless, I'm a little hesitant, I think, to disagree with Judge Buckwalter, and, as a result, I don't believe that there is any basis on this record that I could apply a Delaware limitations period, although I believe that there is a difference in looking at international law issues with respect to the comity and so forth.

Nonetheless, I don't believe that that is material to the Court's determination. I think this case is governed by the earlier opinion that I wrote, and, as a result, the ultimate statute of limitations will bar this action.

In the event that I am reversed, then I think there is still the motion for summary judgment pending on the regular statute of limitations issue. Is there some proceeding that

you want to address with respect to the regular statute of limitations issues now or should that abide future courses of events?

MR. RESTIVO: I think we need to abide the course of events given what Mr. Speights told me before we started, which is he is here to try the ultimate statute of limitations. If we need to try the regular statute of limitations, we would represent to the Court our evidence in this trial is the same evidence we would put in for the regular statute, and maybe Mr. Speights and our side and the Court could agree that we would use this record and simply argue from that by way of argument, but I don't think we have to decide that today, Your Honor. But we would have no different evidence other than the claim files we already introduced.

THE COURT: Mr. Speights.

MR. SPEIGHTS: Well, first of all, of course, Mr. Restivo and I had a lot of credibility, because we met just 20 minutes outside there. I came to try the ultimate statute, because the pretrial statement -- our pretrial order deals only with the ultimate statute. I really hadn't thought through these other things, but I'm confident if a trial is required on the regular statute of limitations, that Mr. Restivo and I could work together. But I frankly haven't thought through what that might entail.

THE COURT: All right. I will -- I think what I need

then is an order from the debtor -- let me move this one note -- that will indicate that for the reasons expressed on this record and in the opinion that I previously wrote these two claims are barred by the ultimate statute of limitations. I will take that order from the debtor after you run it by Mr. Speights.

And then I guess I'll just wait to hear from you folks with respect to the motion for summary judgment. Should it just sit out there until --

MR. SPEIGHTS: Actually, it's sitting out there for the 35 as well, because once you enter that order, we file a notice of appeal on that, and I would think that --

THE COURT: That's still pending.

MR. SPEIGHTS: -- after that appeal is disposed of, one way or the other, if Your Honor is affirmed, it will evaporate.

THE COURT: Okay, then I'll just wait to hear from you about that, because I think you're correct. It's still out there on the other matters, too. So okay. I'll take an order when the debtor submits it, and thank you very much. Anything further?

MR. RESTIVO: No, Your Honor.

MR. SPEIGHTS: No, Your Honor.

THE COURT: This may be the shortest trial I've ever conducted. We're adjourned. Thank you.

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C E R T I F I C A T I O N

I, PATRICIA C. REPKO, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Patricia C. Repko DATE: April 22, 2010

PATRICIA C. REPKO

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